



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 8, 2004

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185

OR2004-4641

Dear Ms. Graham:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 203005.

The Mesquite Police Department (the "department") received a request for any calls or reports concerning the requestor and two named individuals. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.103, 552.108, and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You claim that Exhibits 2 through 5 are excepted from disclosure under section 552.101 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses the doctrine of common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). When a law enforcement agency is asked to compile a particular individual's criminal history information, the compiled information takes on a character that implicates the individual's right to privacy in a manner that the same information in an uncompiled state does not. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); *see also* Open Records Decision No. 616 at 2-3 (1993). However, a request that seeks information about specific incidents does not implicate an individual's right to privacy.

In this instance, the request is for any reports concerning the requestor and two named individuals. Thus, it is obvious that the requestor is aware of the specific incidents at issue. Therefore, Exhibits 2 through 5 may not be withheld in their entirety under section 552.101 and common law privacy.

However, some of the information contained in Exhibits 2 and 4 is subject to common law privacy. This office has found that the following types of information are excepted from required public disclosure under common law privacy: an individual's criminal history when compiled by a governmental body, *see* Open Records Decision No. 565 (*citing United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989)); and personal financial information not relating to a financial transaction between an individual and a governmental body. *See* Open Records Decision No. 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history), 523 (1989). After review of the information at issue, we agree that the information you marked is excepted under section 552.101 of the Government Code and common law privacy and must be withheld from disclosure.

You claim that the reports in Exhibit 2 are excepted from disclosure under section 261.201 of the Family Code. Section 261.201(a) provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

After review of Exhibit 2, we find that one of the reports relates to an allegation of child abuse. Thus, this report is within the scope of chapter 261 of the Family Code. You have not indicated that the department has adopted a rule that governs the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, we find that the report we marked is confidential pursuant to section 261.201 of the Family Code and must be withheld under section 552.101 of the Government Code.¹ We note,

¹We note, however, that if the Texas Department of Family and Protective Services has created a file on this alleged abuse, the child's parent(s) may have the statutory right to review that file. *See* Fam. Code § 261.201(g).

however, that the remaining report in Exhibit 2 was not used or developed in an investigation of child abuse. Thus, we find that you have failed to establish that this information falls within the scope of section 261.201. Therefore, the remaining report cannot be withheld under section 552.101 of the Government Code.

You claim that some of the information in Exhibit 3 is excepted from disclosure under section 552.101 in conjunction with sections 771.061 and 772.118 of the Health and Safety Code. Section 552.101 also encompasses information protected by other statutes. Section 771.061(a) of the Health and Safety Code makes confidential "[i]nformation that a service provider of telecommunications service is required to furnish to a governmental entity in providing computerized 9-1-1 service" as well as "[i]nformation that is contained in an address database maintained by a governmental entity or a third party used in providing computerized 9-1-1 service." Thus, to the extent the department provides computerized 9-1-1 service and the telephone numbers and addresses at issue were required to be furnished to the department by a telecommunications service provider, the telephone numbers and addresses you marked in Exhibit 3 are confidential under section 771.061 of the Health and Safety Code and must be withheld under section 552.101 of the Government Code. *See* Open Records Decision No. 661 at 2 (1999).

However, if section 771.061 of the Health and Safety Code is inapplicable, then a portion of this information may be confidential under chapter 772 of the Health and Safety Code. Chapter 772 authorizes the development of local emergency communications districts. Sections 772.118, 772.218, and 772.318 of the Health and Safety Code apply only to an emergency 911 district established in accordance with chapter 772. *See* Open Records Decision No. 649 (1996). These sections make the originating telephone numbers and addresses of 911 callers that are furnished by a service supplier confidential. *Id.* at 2. Section 772.118 applies to an emergency communication district for a county with a population of more than two million. You inform us that the emergency communication district in this instance is subject to section 772.118. Therefore, you must withhold the 911 callers' originating addresses and telephone numbers we have marked in Exhibit 3 based on section 552.101 as information deemed confidential by statute.

We note that Exhibits 2 and 4 contain biometric identifiers that are excepted from disclosure under section 560.003 of the Government Code. Section 552.101 encompasses sections 560.001, 560.002, and 560.003 of the Government Code, which govern fingerprint information and provide:

Sec. 560.001. DEFINITIONS. In this chapter

- (1) "Biometric identifier" means a retina or iris scan, fingerprint, voiceprint, or record of hand or face geometry.

(2) "Governmental body" has the meaning assigned by Section 552.003 [of the Government Code], except that the term includes each entity within or created by the judicial branch of state government.

Sec. 560.002. DISCLOSURE OF BIOMETRIC IDENTIFIER. A governmental body that possesses a biometric identifier of an individual:

(1) may not sell, lease, or otherwise disclose the biometric identifier to another person unless:

(A) the individual consents to the disclosure;

(B) the disclosure is required or permitted by a federal statute or by a state statute other than Chapter 552 [of the Government Code]; or

(C) the disclosure is made by or to a law enforcement agency for a law enforcement purpose; and

(2) shall store, transmit, and protect from disclosure the biometric identifier using reasonable care and in a manner that is the same as or more protective than the manner in which the governmental body stores, transmits, and protects its other confidential information.

Sec. 560.003. APPLICATION OF CHAPTER 552. A biometric identifier in the possession of a governmental body is exempt from disclosure under Chapter 552.

Thus, pursuant to section 552.101 and section 560.003, the department must withhold the fingerprint information we marked in Exhibits 2 and 4 unless section 560.002 permits its disclosure.

Exhibits 2, 3, and 4 contain social security numbers that may be confidential under federal law. A social security number or "related record" may be excepted from disclosure under section 552.101 of the Government Code in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the social security numbers in the submitted information are confidential under section 405(c)(2)(C)(viii)(I), and are therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution the

department, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing the social security numbers, you should ensure that the number was not obtained or maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990.

You claim that Exhibits 2, 3, and 4 contain motor vehicle information that is excepted under section 552.130. Section 552.130 of the Government Code provides:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state;
- (2) a motor vehicle title or registration issued by an agency of this state[.]

You must withhold the marked motor vehicle information in Exhibits 2, 3, and 4 under section 552.130 of the Government Code.

Finally, you seek to withhold Exhibit 5 under section 552.108 of the Government Code. Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), .301(e)(1)(a); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You inform us that Exhibit 5 relates to a case that is currently pending. You state that charges have been filed with the Dallas County District Attorney's Office and that a court date has been set. Based upon your representations and our review of the submitted documents, we conclude that release of Exhibit 5 would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, section 552.108(a)(1) is applicable to Exhibit 5.²

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle*. Exhibit 5 also contains arrest warrants and a supporting affidavit. Article 15.26 of the Code of Criminal Procedure states "[t]he arrest

²As we are able to make this determination, we need not address your remaining arguments against disclosure.

warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant, is public information.” As a general rule, the exceptions found in chapter 552 of the Government Code do not apply to information that is made public by other statutes. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989); *see also* Gov’t Code § 311.026 (where general statutory provision conflicts with a specific provision, the specific provision prevails as an exception to the general provision); *Cuellar v. State* (521 S.W.2d 277 (Tex.Crim.App.1975) (under well-established rule of statutory construction, specific statutory provisions prevail over general ones). Therefore, you must release the arrest warrants and supporting affidavit in Exhibit 5 in accordance with article 15.26 of the Code of Criminal Procedure. Thus, with the exception of basic information and the arrest warrants and supporting affidavit, which must be released, you may withhold Exhibit 5 under section 552.108(a)(1) of the Government Code. We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov’t Code § 552.007.

In summary, you must withhold the information you marked under section 552.101 of the Government Code in conjunction with common law privacy. One of the reports in Exhibit 2 must be withheld under section 261.201 of the Family Code. To the extent the department provides computerized 9-1-1 service and the telephone numbers and addresses were required to be furnished to the department by a telecommunications service provider, the marked telephone numbers and addresses in Exhibit 3 are confidential under section 771.061 of the Health and Safety Code and must be withheld under section 552.101 of the Government Code. If section 771.061 is inapplicable, then you must withhold the 911 callers’ originating addresses and telephone numbers we marked in Exhibit 3 under section 772.118 of the Health and Safety Code. You must withhold the fingerprint information in Exhibits 2 and 4 under section 552.101 in conjunction with section 560.003 unless section 560.002 permits its disclosure. The social security numbers in Exhibits 2, 3, and 4 may be excepted from disclosure pursuant to federal law. The marked motor vehicle information in Exhibits 2, 3, and 4 must be withheld under section 552.130. With the exception of basic information and the arrest warrants and supporting affidavit, Exhibit 5 may be withheld under section 552.108(a)(1). The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the

governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, reading "Melissa Vela-Martinez". The signature is fluid and cursive, with a large, stylized "M" and "V".

Melissa Vela-Martinez
Assistant Attorney General
Open Records Division

MVM/sdk

Ref: ID# 203005

Enc. Submitted documents

c: Ms. Amanda Gerber
3824 Hunters Trail
Mesquite, Texas 75150
(w/o enclosures)